IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MARVIN EARL McCOY,   CV. 09-1208-MO

        Plaintiff,   ORDER TO DISMISS

   v.

DR. J. BECKER, et al.,

        Defendants.

MOSMAN, District Judge.

    This prisoner 42 U.S.C. § 1983 action comes before the court
on defendants' Status Report and Motion to Dismiss. Defendants
advise the court that plaintiff has absconded from supervision, and
continues to fail to various discovery requests contrary to the
court's Order of December 3, 2010. Defendants therefore ask the
court to dismiss this action pursuant to Fed. R. Civ. P.
37(b)(2)(A)(v). The court previously struck plaintiff's Response
to the Motion to Dismiss based on his failure to serve a copy on
counsel for defendants. Although the court allowed plaintiff an

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additional 30 days in which to file and serve his response, he has not done so.

On December 3, 2010, the court granted defendants' Motion to Compel, and required plaintiff to respond to defendants' First Request for Production of Documents and First Request for Admissions within 30 days. The court specifically advised plaintiff that his failure to do so would result in the dismissal of this action pursuant to Fed. R. Civ. P. 37(b)(2)(A)(v), which allows the court to dismiss an action based on a litigant's failure to comply with a discovery order.

According to the Declaration of Justin Emerson Kidd, Assistant Attorney General for the State of Oregon, plaintiff not only failed to comply with the court's discovery Order, but also absconded from parole on August 11, 2010 and, as of January 26, 2011, was still a fugitive. Kidd Affidavit, pp. 2-3. Because plaintiff has not complied with the court's December 3, 2010 discovery Order, the court dismisses plaintiff's Complaint with prejudice.

CONCLUSION

Defendants' Motion to Dismiss [31] is GRANTED, and the court DISMISSES plaintiff's Complaint [4] with prejudice.

IT IS SO ORDERED.

DATED this _5th_ day of May, 2011.

/s/ Michael W. Mosman
        Michael W. Mosman
        United States District Judge

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